

## Department of Energy

## § 603.1010

(1) An award may be terminated in whole or in part by the contracting officer, if a recipient materially fails to comply with the terms and conditions of the award.

(2) Subject to a reasonable determination by either party that the project will not produce beneficial results commensurate with the expenditure of resources, that party may terminate in whole or in part the agreement by providing at least 30 days advance written notice to the other party, provided such notice is preceded by consultation between the parties. The two parties will negotiate the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. If either party determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purpose for which the award was made, the award may be terminated in its entirety.

(3) Unless otherwise negotiated, for terminations of an expenditure based TIA, DOE's maximum liability is the lesser of:

(i) DOE's share of allowable costs incurred up to the date of termination, or

(ii) The amount of DOE funds obligated to the TIA.

(4) Unless otherwise negotiated, for terminations of a fixed-support based TIA, DOE shall pay the recipient a proportionate share of DOE's financial commitment to the project based on the percent of project completion as of the date of termination.

(5) Notwithstanding paragraphs (3) and (4) of this section, if the award includes milestone payments, the Government has no obligation to pay the recipient beyond the last completed and paid milestone if the recipient decides to terminate.

(b) Enforcement. The standards of 10 CFR 600.352 (for enforcement) and the procedures in 10 CFR 600.22 (for disputes and appeals) apply.

### Subpart H—Executing the Award

#### § 603.1000 Contracting officer's responsibilities at time of award.

At the time of the award, the contracting officer must:

(a) Ensure that the award document contains the appropriate terms and conditions and is signed by the appropriate parties, in accordance with §§ 603.1005 through 603.1015.

(b) Document the analysis of the agreement in the award file, as discussed in § 603.1020.

(c) Provide information about the award to the office responsible for reporting on TIAs.

#### THE AWARD DOCUMENT

#### § 603.1005 General responsibilities.

The contracting officer is responsible for ensuring that the award document is complete and accurate. The document should:

(a) Address all issues;

(b) State requirements directly. It is not helpful to readers to incorporate statutes or rules by reference, without sufficient explanation of the requirements. The contracting officer generally should not incorporate clauses from the Federal Acquisition Regulation (48 CFR parts 1–53) or Department of Energy Acquisition Regulation (48 CFR parts 901–970) because those provisions are designed for procurement contracts that are used to acquire goods and services, rather than for a TIA or other assistance instruments.

(c) Be written in clear and concise language, to minimize potential ambiguity.

#### § 603.1010 Substantive issues.

Each TIA is designed and negotiated individually to meet the specific requirements of the particular project, so the list of substantive issues that will be addressed in the award document may vary. Every award document must address:

(a) *Project scope.* The scope is an overall vision statement for the project, including a discussion of the project's purpose, objectives, and detailed commercial goals. It is a critical provision because it provides a context for resolving issues that may arise during post-award administration. In a fixed-support TIA, the well-defined outcomes that reliably indicate the amount of effort expended and serve as the basis for the level of the fixed support must be

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clearly specified (see §§ 603.305 and 603.560(a)).

(b) *Project management.* The TIA should describe the nature of the relationship between the Federal Government and the recipient; the relationship among the participants, if the recipient is an unincorporated consortium; and the overall technical and administrative management of the project. A TIA is used to carry out collaborative relationships between the Federal Government and the recipient. Consequently, there must be substantial involvement of the DOE program official (see § 603.220) and usually the contracting officer. The program official provides technical insight, which differs from the usual technical oversight of a project. The management provision also should discuss how modifications to the TIA are made.

(c) *Termination, enforcement, and disputes.* A TIA must provide for termination, enforcement remedies, and disputes and appeals procedures, in accordance with § 603.920.

(d) *Funding.* The TIA must:

(1) Show the total amount of the agreement and the total period of performance.

(2) If the TIA is an expenditure-based award, state the Government's and recipient's agreed-upon cost shares for the project period and for each budget period. The award document should identify values for any in-kind contributions, determined in accordance with §§ 603.530 through 603.555, to preclude later disagreements about them.

(3) Specify the amount of Federal funds obligated and the performance period for those obligated funds.

(4) State, if the agreement is to be incrementally funded, that the Government's obligation for additional funding is contingent upon the availability of funds and that no legal obligation on the part of the Government exists until additional funds are made available and the agreement is amended. The TIA also must include a prior approval requirement for changes in plans requiring additional Government funding, in accordance with § 603.825.

(e) *Payment.* The TIA must identify the payment method and tell the recipient how, when, and where to submit payment requests, as discussed in

§§ 603.805 through 603.815. The payment method must take into account sound cash management practices by avoiding unwarranted cash advances. For an expenditure-based TIA, the payment provision must require the return of interest should excess cash balances occur, in accordance with § 603.820. For any TIA using the milestone payment method described in § 603.805(c), the TIA must include language notifying the recipient that the contracting officer may adjust amounts of future milestone payments if a project's expenditures fall too far below the projections that were the basis for setting the amounts (see § 603.575(c) and § 603.1105(c)).

(f) *Records retention and access to records.* The TIA must include the records retention requirement at § 603.910. The TIA also must provide for access to for-profit and nonprofit participants' records, in accordance with § 603.915 and § 603.920.

(g) *Patents and data rights.* In designing the patents and data rights provision, the TIA must set forth the minimum required Federal Government rights in intellectual property generated under the award and address related matters, as provided in §§ 603.840 through 603.875. It is important to define all essential terms in the patent rights provision.

(h) *Foreign access to technology and U.S. competitiveness.* The TIA must include provisions, in accordance with § 603.875, concerning foreign access and domestic manufacture of products using technology generated under the award.

(i) *Title to, management of, and disposition of tangible property.* The property provisions for for-profit and nonprofit participants must be in accordance with §§ 603.685 through 603.700.

(j) *Financial management systems.* For an expenditure-based award, the TIA must specify the minimum standards for financial management systems of both for-profit and nonprofit participants, in accordance with §§ 603.615 and 603.620.

(k) *Allowable costs.* If the TIA is an expenditure-based award, it must specify the standards that both for-profit and nonprofit participants are to use to determine which costs may be charged

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to the project, in accordance with §§ 603.625 through 603.635, as well as § 603.830.

(l) *Audits.* If a TIA is an expenditure-based award, it must include an audit provision for both for-profit and non-profit participants and subrecipients, in accordance with §§ 603.640 through 603.670 and § 603.675.

(m) *Purchasing system standards.* The TIA should include a provision specifying the standards in §§ 603.700 and 603.705 for purchasing systems of for-profit and nonprofit participants, respectively.

(n) *Program income.* The TIA should specify requirements for program income, in accordance with § 603.835.

(o) *Financial and programmatic reporting.* The TIA must specify the reports that the recipient is required to submit and tell the recipient when and where to submit them, in accordance with §§ 603.880 through 603.900.

(p) *Assurances for applicable national policy requirements.* The TIA must incorporate assurances of compliance with applicable requirements in Federal statutes, Executive Orders, or regulations (except for national policies that require certifications). Appendix A to this part contains a list of commonly applicable requirements that should be augmented with any specific requirements that apply to a particular TIA (e.g., general provisions in the appropriations act for the specific funds that are being obligating).

(q) *Other matters.* The agreement should address any other issues that need clarification, including the name of the contracting officer who will be responsible for post-award administration and the statutory authority or authorities for entering into the TIA. In addition, the agreement must specify that it takes precedence over any inconsistent terms and conditions in collateral documents such as attachments to the TIA or the recipient's articles of collaboration.

### § 603.1015 Execution.

(a) If the recipient is a consortium that is not formally incorporated and the consortium members prefer to have the agreement signed by all of them individually, the agreement may be executed in that manner.

(b) If they wish to designate one consortium member to sign the agreement on behalf of the consortium as a whole, the determination whether to execute the agreement in that way should not be made until the contracting officer reviews the consortium's articles of collaboration with legal counsel.

(1) The purposes of the review are to:

(i) Determine whether the articles properly authorize one participant to sign on behalf of the other participants and are binding on all consortium members with respect to the RD&D project; and

(ii) Assess the risk that otherwise could exist when entering into an agreement signed by a single member on behalf of a consortium that is not a legal entity. For example, the contracting officer should assess whether the articles of collaboration adequately address consortium members' future liabilities related to the RD&D project (e.g., whether they will have joint and severable liability).

(2) After the review, in consultation with legal counsel, the contracting officer should determine whether it is better to have all of the consortium members sign the agreement individually or to allow them to designate one member to sign on all members' behalf.

### REPORTING INFORMATION ABOUT THE AWARD

### § 603.1020 File documents.

The award file should include an analysis which:

(a) Briefly describes the program and details the specific commercial benefits that should result from the project supported by the TIA. If the recipient is a consortium that is not formally incorporated, a copy of the signed articles of collaboration should be attached.

(b) Describes the process that led to the award of the TIA, including how DOE solicited and evaluated proposals and selected the one supported through the TIA.

(c) Explains the basis for the decision that a TIA was the most appropriate instrument, in accordance with the factors in Subpart B of this part. The explanation must include the answers to